



# California Regional Water Quality Control Board

## San Diego Region



**Terry Tamminen**  
Secretary for  
Environmental  
Protection

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**Arnold Schwarzenegger**  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, visit our website.*

December 15, 2003

All NPDES Permit Holders and Enrollees

### NEW LEGISLATION APPLIES \$3,000 MANDATORY MINIMUM PENALTY FOR LATE MONITORING REPORTS (WATER CODE SECTION 13385)

This is to notify you that on October 8, 2003 the governor signed into law AB1541 (Montanez) that may affect persons and entities holding NPDES permits in this region. The new law takes effect on January 1, 2004.

Mandatory Minimum Penalties (MMP) initially became law in 1999 with the passage of the "Clean Water Enforcement and Pollution Act of 1999 (SB 709) and is codified in Water Code Section 13385. Water Code Section 13385 establishes that as of January 1, 2000, persons who violate effluent limitations established in an National Pollutant Discharge Elimination System (NPDES) permit are liable for a MMP of \$3,000 for serious and chronic violations meeting certain requirements in any period of 6 consecutive months.

The new law adds Section 13385.1 to the Water Code, classifying the failure to submit a Discharger Monitoring Report (DMR), which are required of persons subject to NPDES permits, as a "serious violation" and subject to a minimum penalty of \$3,000 for each complete 30-day period that a report is late. The Regional Board expects that MMP also apply to monitoring reports that are submitted but are significantly deficient or so incomplete as to impede the review of the status of compliance at the facility. However, the Regional Board is awaiting further guidance from the State Water Resource Control Board's Office of Chief Counsel regarding this interpretation of the law. Obviously, to avoid penalties the Regional Board recommends you perform all necessary water quality analytical monitoring and testing to ensure that all required monitoring reports are complete and submitted on time.

The following documents provide additional information on the MMP process and are available for review at the Regional Board office or on the Internet at the following web addresses:

- 1.) California Water Code Section 13385 [www.swrcb.ca.gov/water\\_laws/docs/portercologne2003.pdf](http://www.swrcb.ca.gov/water_laws/docs/portercologne2003.pdf)

### ***California Environmental Protection Agency***

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- 2.) Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations [www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr123\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr123_00.html)
- 3.) State Water Resource Control Board Enforcement Policy dated February 19, 2002. [www.swrcb.ca.gov/plnspols/wqep.doc](http://www.swrcb.ca.gov/plnspols/wqep.doc)

If you have any questions or need more information regarding applicability of mandatory minimum penalties at your facility please call the following Regional Board staff for more information.

John Phillips (858) 627-3928 – NPDES permits for Industrial discharges, Groundwater Extraction, Utility Vaults, and Hydrostatic testing

Brian Kelley (858) 467-4254 – NPDES permits for POTWs

Mark Alpert (858) 467-2963 – Compliance Assurance Unit

Sincerely,

JOHN H. ROBERTUS  
Executive Officer  
San Diego Regional Water Quality Control Board

cc: POTW NPDES Dischargers  
Extraction Dewatering NPDES Dischargers  
Industrial NPDES Dischargers  
Hydrostatic Testing NPDES Dischargers  
Utility Vault NPDES Dischargers

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